

Administrative Penalty Director's Decision

Named Party: ATCO Gas and Pipelines Ltd. **BA Code:** 0144

File No. 2017-018

Legislative Authority

Sections 70 through 75 of the *Responsible Energy Development Act (REDA)* and section 8.1 of *REDA General Regulation*

Administrative Penalty Type

Section 71(4)(a) of *REDA* in reference to payment of the penalty (see **Penalty Assessment**, below)

PENALTY ASSESSMENT

Preliminary Penalty Assessment

Number of Counts Identified	Base Assessment Amount	Factor Variance(s)	
Count 1	\$5000	+\$2000	
Count 2	\$5000		
Count 3	\$5000		
Total Counts: 3	Total Base Assessment: \$15 000	Total Variance:	\$2000¹ (not applied)

Total Preliminary Penalty Assessment: \$15 000

¹ Under section 8.3(2) of the *Responsible Energy Development Act General Regulation*, the AER may increase or decrease the amount of an administrative penalty after considering certain factors; however, per section 8.3(3) the maximum amount cannot exceed \$5000 for each day or part of a day on which a contravention occurs or continues. The assessment of the factors and factor variance will remain as part of the preliminary administrative penalty assessment as the evidence supports the increased amounts described in the factors table.

Director's Decision Summary

On November 1, 2018, I, Ron Wagener, Director for the Alberta Energy Regulator (AER), spoke with Mike Whittall, Senior Manager for ATCO Gas and Pipelines Ltd. (ATCO) to discuss the Preliminary Administrative Penalty Assessment (Assessment). Mr. Whittall agreed to meeting in person to discuss the investigation findings and Assessment.

On November 13, 2018, I, Ron Wagener, Director for the AER met with ATCO representatives Mike Whittall (Senior Manager), Stephanie Schubert (VP Construction), and Mike Mayner (Senior Engineer).

The purpose of the meeting was to review the facts on which the Assessment was based, how the Assessment was calculated, and provide an opportunity for ATCO to share with the AER any relevant information not previously submitted to be considered prior to making a final decision.

During the meeting an agreed upon deadline of November 16, 2018, was provided should ATCO wish to provide further information for consideration.

The Assessment identified the following counts and penalty assessments.

Pipeline Act

COUNT 1

On or about April 25, 2017, in the province of Alberta, ATCO Gas and Pipelines Ltd. did fail to ensure that an existing pipeline was properly marked and thereby failed to take all precautions reasonably necessary to ascertain whether there was an existing pipeline in the area of a ground disturbance located at LSD 13-28-048-07W5M, contrary to section 32(1) of the Pipeline Act.

BASE PENALTY TABLE				
Seriousness of Contravention				
Extent of actual or potential loss or damage		Major	Moderate	Minor
	Major	5000	3500	2500
	Moderate	3500	2500	1500
	Minor to None	2500	1500	1000
	None	1000	600	250

Seriousness of Contravention: Major

The intent of the requirement to take all precautions reasonably necessary is to prevent line strikes which may impact workers, the public and the environment. It speaks directly to the AER's mandate of providing for the safe, orderly and environmentally responsible development of energy resources. Accordingly, a designation of major for seriousness of contravention is appropriate.

ATCO's acknowledgement of the three main contributing conditions to the line strike (i.e., negligence, complacency, and site conditions) speaks to the very nature and importance of this requirement. Precautionary measures, before undertaking and during a conceivably dangerous activity, are not only prudent, but helps protect the environment and public safety.

Extent of Actual or Potential Loss or Damage: Major

While there were no injuries or environmental damage, the potential for loss or damage when striking a 10 inch condensate line with several workers present, warrants a classification of major. It is reasonable to conclude that if the pipeline had ruptured the released condensate would have adversely impacted the environment and people in the immediate area would have been impacted being exposed to condensate liquids, vapours, and potential for fire-related injuries.

Base Assessment: \$5000

*Pipeline Rules***COUNT 2**

On or about April 25, 2017, in the province of Alberta, ATCO Gas and Pipelines Ltd. did fail to notify the licensee of pipeline licence 19685-56 and Alberta One-Call at least 2 days and not more than 10 days

before undertaking a ground disturbance, located at LSD 13-28-048-07W5M, contrary to section 60(2) of the *Pipeline Rules*.

BASE PENALTY TABLE Seriousness of Contravention				
Extent of actual or potential loss or damage	Seriousness of Contravention			
		Major	Moderate	Minor
	Major	5000	3500	2500
	Moderate	3500	2500	1500
	Minor to	2500	1500	1000
	None	1000	600	250

Seriousness of Contravention: Major

Conducting mechanical excavation work, even under ideal site conditions, carries risks. Relying on 54-day old information and not notifying the pipeline licensee of the ground disturbance operation only increases the risk to the existing pipelines, workers, and the environment. Valid location information and timely communication with an existing pipeline licensee are necessary in managing these risks.

The intent of this requirement is at least twofold; the prevention of pipeline strikes which may impact workers, the public and the environment, as well as the identification of additional risks or concerns related to the existing pipeline(s) in the excavation area, and within a timely manner. Relying on old information means material changes could have occurred in the interim, increasing operational risks, and necessitating changes in excavation procedures. This requirement speaks directly to the AER's mandate of providing for the safe, orderly and environmentally responsible development of energy resources. Accordingly, a designation of major for seriousness of contravention is appropriate.

Extent of Actual or Potential Loss or Damage: Major

While there were no injuries or environmental damage, the potential for loss or damage when striking a 10 inch condensate line with several workers present, warrants a classification of major. It is reasonable to conclude that if the pipeline had ruptured the released condensate would have adversely impacted the environment and people in the immediate area would have been impacted being exposed to condensate liquids, vapours, and potential for fire-related injuries.

Base Assessment: \$5000

Pipeline Rules

COUNT 3

On or about April 25, 2017, in the province of Alberta, ATCO Gas and Pipelines Ltd. did fail to locate and expose pipeline licence 19685-56 by hand excavation before commencing mechanical excavation within 5 metres of pipeline licence 19685-56 located at LSD 13-28-048-07W5M, contrary to section 65(3) of the *Pipeline Rules*.

BASE PENALTY TABLE				
Seriousness of Contravention				
Extent of actual or potential loss or damage		Major	Moderate	Minor
	Major	5000	3500	2500
	Moderate	3500	2500	1500
	Minor to None	2500	1500	1000

Seriousness of Contravention: Major

The intent of the requirement to hand excavate before mechanical excavation is to prevent line strikes which may impact workers, the public and the environment. It speaks directly to the AER's mandate of providing for the safe, orderly and environmentally responsible development of energy resources. Accordingly, a designation of major for seriousness of contravention is appropriate.

Clearly identifying known hazards is fundamental in preventing incidents that may impact public safety or result in adverse effects to the environment. It is concerning that numerous procedural issues contributed to the failure to locate and expose the pipeline, with subsequent line strike by mechanical excavation. These include outdated line locates, working in poor site conditions without valid line location indicators, and uninformed workers (e.g., new foreman and excavator operator) who, in the interests of their own safety, should have been made aware of the existing pipeline's location, through hand excavation, so that mechanical excavation work could proceed in a safe manner.

Extent of Actual or Potential Loss or Damage: Major

While there were no injuries or environmental damage, the potential for loss or damage when striking a 10 inch condensate line with several workers present, warrants a classification of major. It is reasonable to conclude that if the pipeline had ruptured the released condensate would have adversely impacted the environment and people in the immediate area would have been impacted being exposed to condensate liquids, vapours, and potential for fire-related injuries.

Base Assessment: \$5000

Factors to be Considered to Vary the Assessment

- (a) the importance to the regulatory scheme of compliance with the provision that was contravened;
- (b) the degree of wilfulness or negligence, if any, on the part of any person responsible for the contravention;
- (c) any steps taken by a person responsible for the contravention to avoid or limit the extent of any actual loss or damage that resulted or any potential loss or damage that may reasonably be expected to result from the contravention;
- (d) any steps taken by a person responsible for the contravention to prevent its recurrence;
- (e) any previous contravention of a provision prescribed by section 8.1 by a person responsible for the contravention;
- (f) whether a person responsible for the contravention derived or is likely to derive any economic benefit from the contravention;
- (g) any other factor that, in the opinion of the Regulator, is relevant.

Factors Applicable to this Case (Preliminary Assessment)

Factor from above	Amount Varied	Description/Comments
(a)	+\$1000	Operational requirements involving safety measures, such as taking all reasonable precautions and positively identifying existing pipelines before mechanical excavation, where people are present and may be directly affected speak directly to the AER's regulatory mandate.
(b)	+\$1000	Outdated line location information, uninformed workers, working in poor site conditions without valid line location indicators, and signing off on a GD permit checklist but not actually following that checklist all contributed to the pipeline strike and do not constitute reasonable conduct.
(c)	Neutral	Factor not applied in this case.
(d)	Neutral	Factor not applied in this case.
(e)	Neutral	Factor not applied in this case.
(f)	Neutral	Factor not applied in this case.
(g)	Neutral	Factor not applied in this case.

Discussion

At the November 13, 2018, meeting ATCO representatives sought clarification on a couple of terms within the Assessment but did not dispute the investigation findings. ATCO provided information on improvements to their ground disturbance program's procedures and systems. ATCO also provided examples of their safety reports and ground disturbance checklists.

As part of their submission ATCO mentioned the implementation of a Construction Quality Management Plan and steps to ensure that safe ground disturbance practices and procedures become part of the overall work culture.

ATCO was given the opportunity to provide any additional information by November 16, 2018. On November, 16, 2018, ATCO submitted a letter to Ron Wagener indicating that ATCO had nothing further to submit.

Final Penalty Decision

I, Ron Wagener, Director for the AER, have fully considered all of the information collected in the investigation and submission presented to me by ATCO in the November 13, 2018, meeting.

I am of the opinion that the contraventions described did occur, are supported by the evidence, and that there was a lack of due diligence on the part of ATCO. The AER expects industry to provide adequate supervision, procedures, training, and communication to ensure operations are conducted safely, which did not happen in this case.

I find the total base penalty amounts for all counts reasonable and remain the same. I find the amounts applied to variance factors a) and b) reasonable and the also remain the same.

I am of the opinion that ATCO's ground disturbance practices are improving and that there is progress on a "culture" shift at ATCO to ensure safe ground disturbance is a priority, at all levels of the company. Therefore, I find that a variance factor decrease of \$500, under variance factor d) is reasonable and the final assessment is as follows.

Number of Counts Identified	Base Assessment Amount	Factor Variance(s)	
Count 1	\$5000	+\$2000 [factor a) and b)] -\$500 [factor d)]	
Count 2	\$5000		
Count 3	\$5000		
Total Counts: 3	Total Base Assessment: \$15 000	Total Variance:	\$1500² (not applied)

FINAL PENALTY ASSESSMENT: \$15 000

Date: December 13, 2018

Director's Signature: *<original signed by>*

Ron Wagener, Director, Leadership, Regulatory Efficiency & Innovation,
Environment and Operational Performance Branch, AER

² Under section 8.3(2) of the *Responsible Energy Development Act General Regulation*, the AER may increase or decrease the amount of an administrative penalty after considering certain factors. However, per section 8.3(3) of the *Responsible Energy Development Act General Regulation*, the maximum amount cannot exceed \$5000 for each day or part of a day on which a contravention occurs or continues.

Given the above, the amounts of the administrative penalty associated with the relevant counts cannot be increased by any factor variance. The assessment of the factors and factor variance will remain as part of the final administrative penalty assessment as the evidence supports the increased amounts described in the factors table.